

ILLINOIS COMMERCE COMMISSION

ORDER

Procedural History

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by Verizon and the Commission Staff, through their respective attorneys. Staff filed the verified statement of Christopher L. Graves of the Commission's Telecommunications Division. In his statement, Mr. Graves recommended approval of the Agreement as amended, for the reasons, and subject to the conditions, described below.

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection, services or network elements pursuant to Section 251. Verizon and NPCR have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission."

Section 252(e)(1) provides that a State commission to which such an agreement is submitted “shall approve or reject the agreement, with written findings as to any deficiencies.” Section 252(e)(2) provides that the State commission may only reject the negotiated agreement if it finds that “the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement” or that “the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity.”

Section 252(e)(4) provides that the agreement shall be deemed approved if the State commission fails to act within 90 days after submission by the parties. This provision further states that “[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.” Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a State commission’s determination on a negotiated agreement may bring an action in an appropriate Federal district court.

Section 252(h) requires a State commission to make a copy of each agreement approved under subsection (e) “available for public inspection and copying within 10 days after the agreement or statement is approved.”

Section 252(i) requires a local exchange carrier to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

Purpose and Terms of the Agreement

The instant petition seeks approval of an Amendment to an existing Interconnection Agreement between the parties. The original Agreement between Verizon and NPCR reflected the adoption by NPCR an agreement between Verizon and NorthPoint Communications Incorporated. The Article VII Amendment contains terms and provisions relating to access by NPCR to E-911 network systems and databases established and maintained by Verizon. Appendix D specifies rates and charges for E-911.

Position of Staff

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of the Act. Staff says that under this section, the Commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

With regard to the discrimination issue, Staff's position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Verizon for termination on each other's networks and if it imposes costs on Verizon that are no higher than costs imposed by NPCR. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. Staff also states that Section 252 (i) of the Act allows a similarly situated carrier to enter into essentially the same agreement.

Regarding the public interest criterion, Staff recommended that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders, and state and federal law to determine if the Agreement is consistent with the public interest. Staff noted that in previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICS"). Staff believes requiring a service to be priced at or above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. Staff states that all of the services in this Agreement are priced at or above their respective LRSICs. Therefore, Staff submits that this Agreement should not be considered economically inefficient.

Staff recommended that the Commission approve the Agreement subject to Staff's recommended implementation requirements.

Concerning the implementation of the Agreement, Staff recommends that the Commission require Verizon, within five (5) days from the date the Agreement is approved, to modify its tariffs to reference the negotiated agreement for each service. Staff says this requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommends that such references be contained in Verizon's Access tariff, identified as ICC No. 10, Section 18, and in any future tariff that offers any of the services contained in the agreement.

Staff also recommends that the Commission require Verizon to file a verified statement with the Chief Clerk of the Commission ("Chief Clerk"), within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement as amended does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest, convenience and necessity;
- (4) in order to assure that the implementation of the Agreement as amended is in the public interest, Verizon shall implement the Agreement as amended by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement as amended is the same as the Agreement as amended filed in this docket with the verified joint petition; the Chief Clerk should place the Agreement as amended on the Commission's web site under "Interconnection Agreements"; within five days of the entry of this Order, Verizon shall modify its tariffs to reference the Agreement as amended in the manner recommended by Staff and described in the prefatory portion of this Order;
- (5) the Agreement as amended should be approved as hereinafter set forth;
- (6) approval of this Agreement as amended does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement as amended between Verizon and NPCR, reflecting the modifications contained in the Article VII Amendment, is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Verizon shall comply with Findings (4) and (5) above within five (5) days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 8th day of May, 2002.

(SIGNED) RICHARD L. MATHIAS

Chairman